

Duke, Daphne

From: The McMilions <emcmilion3@gmail.com>
Sent: Sunday, July 19, 2020 7:23 PM
To: PSC_Contact
Cc: The McMilions; Nelson, Jeff; Heather Smith; Rebecca J. Dulin; fellerbe@robinsongray.com; Samuel Wellborn; Grube-Lybarker, Carri
Subject: [External] rehearing 2019-331-E
Attachments: REHEARING 2019-331-E.docx; order 2020-342.pdf

Please see attached

I Enrique McMillon Jr. complainant in case 2019-331-E, hereby request and move the new impartial commission for a rehearing on the grounds of bias, impartiality, misrepresentation, judicial misconduct, procedural violations, deceptive misleading, betrayal of the public trust, breach of oath of office, and ethics violations committed by the South Carolina Public Service Commission that I have motioned for recusal. Furthermore ORDER NO. 2020-342 should be inadmissible as grounds for dismissal of the complaint and serves as even more evidence of bias on the part of the commission in favor for the defendant. Defense counsel presented a failure to state a claim defense, everything on order 2020-342 is the SC.PSC picking up the burden of the defense for DECLLC. If this motion for a rehearing is being heard by a new commission comprised of men and women who honor their oath of office, and adhere to the principals of impartiality and fairness, and observe and protect the right to a fair and meaningful hearing, please consider the following:

Terms and conditions are being amended/modified/changed by the defendant DECLLC, a very brief explanation and proof of this fact is the electromechanical analog meter reveals electricity usage on an aggregate basis, the digital meters enable data of electrical usage in granular form, bringing into existence the "internet of things" a very complex and controversial slippery slope that if not kept in check leads to a very real possibility to abuse of power and privacy rights erosion. I have gone in depth of this fact in case 2019-230-E and this case 2019-331-E. The fact that the original verbal contract is being amended/modified/changed by the defendant is not in dispute. The fact that I have a right to be informed with full disclosure to the terms and conditions that are being amended/modified/changed as a party to the agreement in written four corners contract form by the covenant of good faith and fair dealing in all contracts is not in dispute. What the South Carolina Public Service Commission and DECLLC, are refusing to do is honor these uncontested facts, and provide the terms and conditions in written four corners contract form with FULL disclosure signed by both parties. DECLLC attorney Sam Wellborne has stated the company has provided the terms and conditions in the form of tariffs, this is simply not true, the clear evidence of this is where is the contract? With the modern high tech world of wireless devices, social media platforms and agreements reached over the internet, we have all become familiar with the phrase terms and conditions, we know by experience and companies constantly updating terms and conditions and or terms of service, that we as consumers have the right to be informed. This right is so commonplace that it is evidence in and of itself, but the SCPSC, and DECLLC, refuse to provide them. This is the bedrock of my complaint and was also the basis for 2019-230-E which hearing examiner Randall Dong and commissioner Belser left out of complaint 2019-230-E and prevented the commission on ruling on the issue (evidence of bias and judicial misconduct). The commission has a responsibility to at least read the filings in these cases and determine and consider if the complaints have merit. Instead they seem vote on motions of one person who misrepresents my arguments or fails to acknowledge them altogether.

The SCPSC, have repeatedly violated their own rules showing bias in favor of DECLLC. Evidence:

103-300 no rule inconsistent with law . Interfering in the obligation of contracts is a constitutional violation article 1 section 10 clause 1. Encouraging/enabling a party to breach a contract is a tort. (This is evidenced by DECLLC threatening power shut off if I do not agree to a digital meter absent terms and conditions.

103-346 contracts available for public viewing. Where are the contracts with full disclosure? A tariff is not a contract. The SCPSC claims "Duke has already provided, in its motion to dismiss dated July 3, 2019, digital links to the documents Mr. McMilion has requested, and hard copies of all requested documents were also attached. Therefore, Mr. McMilion has no further outstanding claim for which the Commission can grant him relief. Accordingly, I move that we deny his petition for reconsideration." This is nothing short of a lie, the evidence this is not true = no contract with terms and conditions, they cannot or will not provide it.

103-342 Termination of service. Under this rule are listed several reasons a service can be terminated. Not listed is exercising the freedom of contract, and the right to be informed. = coercion.

Unanswered questions:

Questions for South Carolina Public Service commissioners who vote in favor of DECLLC motion to dismiss, a motion unripe for lack of discovery. In case 2019-331-E.

1. 103-346 Where are the contracts? Repeated attempts to view and be informed have been denied, as per this rule they should already be on file for public viewing.
2. Amending terms and conditions and the right to be informed. It is an uncontested fact that terms and conditions are being amended with the digital meters, going from aggregate data to granular data, bringing into play "the internet of things". As a party to the agreement I have reserved the right to be informed of these changes in writing and have been ignored or denied every time. With the covenant of good faith and fair dealing existing in every contract, by what authority does this commission grant DECLLC to breach the original verbal contract for service, and deny me written terms and conditions to make an informed decision?
3. Please review the filings in this case and explain how this commission can violate the United States Constitution Article 1 section 10 clause 1, interfering in the obligations of contracts. Breaching their oath of office, and their duty to protect and defend the United States

Constitution, giving DECLLC the ability to spy/surveillance on the citizens of South Carolina, and violate the most basic principals in contract.

4. Please review the filings in this case concerning the deceptive misleading that the MRM is a remedy, as I have previously stated and provided documentation that the MRM contract is only valid for one year, and DECLLC still refuses to provide the written terms and conditions for that contract. How can this commission in "good faith" continue to ignore these facts?
5. 103-342 reasons for denial of service: Under this rule there is no justification to shut off a parties electricity for requiring written terms and conditions to make an informed decision, and breaching the original verbal contract with the electromechanical analog meter. For a point of clarification please explain yourselves.
6. Motion to recuse for bias and impartiality: Please review the filings in this case and explain how this commission can ignore the motion and give zero response.

Enrique McMillon Jr. 2019-331-E

To the Commissioners of the South Carolina public service commission. I Enrique McMillon Jr. Complainant/Petitioner in 2019-331-E . would like to bring attention regarding commissioner Ervin's statements during the scpsc business meeting on 2/19/2020. Mr. Ervin stated, "Mr. McMillon asserts that his contractual relationship with Duke does not authorize the utility to install a smart meter on his home." This is a misrepresentation of my arguments. Has the commission read the filings in this case? And if so, how is this behavior tolerated? Mr. Ervin stated, "Mr. chairman we need to get this matter concluded." This statement was made before the motion in opposition has been filed. I have been adamant that this case needs to be moved to the discovery phase. With the facts laid bare proving bad faith, and tortious actions by the defendant "DECLLC", and how these actions by default force the commissioners and others to breach their oath of office. If the commission needs to get this matter "concluded", that means they have already jumped to a determination in voting in favor of DECLLC's motion to dismiss. Again, the motion in opposition has yet to be filed. I comprehend why counsel for the defendant does not want this case moved to the discovery phase for reasons previously stated, but the commission wants this case "concluded", hence no discovery phase. How is a reasonable man to believe he is getting a fair and meaningful hearing if the commission itself is misrepresenting my arguments, and jumping to a preconceived conclusion? I am not an attorney, but I recognize bias when I see it. Canons 1 through 3 of the South Carolina Code of Judicial Conduct as adopted by the Court in South Carolina Appellate Court Rule 501 are instructive as to the guidelines for impartiality and integrity for judges to ensure the same occurs in proceedings. Canon 2 explicitly states that a "judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Additionally, the comments to South Carolina Judicial Canon 1 state in pertinent part that a "judge must perform judicial duties impartially and fairly. A judge who manifests

bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. A judge must be alert to avoid behavior that may be perceived as prejudicial." While Mr. Ervin was making these statements the rest of the commission sat there stone-faced, not one member of the commission spoke up to point out this judicial error. I Enrique McMilion Jr. Complainant/Petitioner in 2019-331-E hereby make a motion to recuse commissioners: BELSER, ERT/IN, HAMILTON, HOWARD, RANDALL, WHITFIELD, and WILLIAMS. And be replace by an impartial commission who honor their oath of office and restore the public trust. I require this case be held in abeyancè, while a fair and impartial group of men and women comprising a new commission is being formed, and the recused commissioners are judicially reviewed.

Commissioner Ervin in his pursuit to get this case "concluded" acted as counsel for the defense invoking the doctrine of res judicata, a doctrine not applicable, as per my instructions on the Feb 11th e-mail id 290320 :

To whom it may concern, Please disregard Mr. Wellborns citing of : 'see SCRCP 11(a) ("The written or electronic signature of an attorney or party constitutes a certificate by him... that it is not interposed for delay."); see genera/ly Order No. 2020-33, Docket No. 2019-351-E (Jan. 8, 2020) ("The Commission's complaint process exists to adjudicate disputes or claims, not to create delay for customers who are subject to disconnection because they failed to pay their bill.'). 'Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Linder the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Judy v. Judy, 712 S.E.2d 408, 413 (S.C. 2011); see a/so Order No. 2018-491, Docket No. 2018-171-E (July 11, 2018) ("Ms. Lutz's new complaint attempts to relitigate the same issues decided in Orders No. 2017-728 and 2017-775, which were issued in Docket No. 2017-291-E. Ms. Lutz failed to appeal our 2017 orders to the South Carolina Court of Appeals, and she cannot revive her claims in a new docket.'). On the fact that in over 20 years as a customer I have not once failed to pay an electric bill on time and in full. On the fact that these NEW issues were not brought before the commission and adjudicated because Mr. Dong, and commissioner Belser chose to leave them out before the full commission in the previous complaint.. Enrique McMilion Jr. Complainant/Petitioner

This correction was unopposed by the defense, thereby nullifying res judicata. The defense acquiesced. Furthermore, three minutes of due diligence and an internet connection on Mr. Ervins part would have shown res judicata is waived if not presented as an affirmative defense

Resolution Trust Corp. v. Eagle Lake and Golf Condominiums, 310 S.C. 473, 475, 427 S.E.2d 646, 648 (1993); Failure to plead an affirmative defense is deemed a waiver of the right to assert it, pursuant to Rule 12 - Town of Kingstree v. Chapman, 405 S.C. 282, 313 747 S.E.2d 494, 510 (2013)

These examples are all evidence of bias, its interesting to note in Mr. Ervin's motion:

"Move to deny McMilion's motion to recuse the Commissioners. McMilion has presented no evidence of personal bias to support recusal. Move to dismiss this complaint. By regulation, Duke Energy Carolinas chooses and furnishes its own meters. Duke has deployed smart meters throughout its service territory. In 2016, Duke presented and obtained approval for Rider MRM, under which a customer who wishes to opt out of a smart meter in favor of a manually read meter could do so at additional cost. Duke's requirement that its customers choose between permitting installation of a smart meter at no additional cost and installation of a manually read meter at additional cost does not violate the Complainant's legal rights. Additionally, since this is the third complaint by the same complainant against the same utility arising from the same transaction or occurrence, this complaint is barred by the doctrine of res judicata"

He states no evidence of bias while committing an act of bias, let that sink in for a moment. I have proved the MRM contract as a remedy is a lie, with documentation from DECLLC's own website, and again this commission fails to address it.

Denying the right to discovery. In his "concluded" pursuit Mr. Ervin motioned to rule in favor of DECLLC's motion to dismiss, a stance solidified before a motion in opposition was filed = bias. Preventing discovery and ruling on an unripe motion to dismiss is judicial misconduct. = bias. Commissioner Belser's comments regarding Mr. Ervin's "concluded" comment she believes I misinterpreted the word. The word concluded has always meant and will continue to mean 1. Bring (something) to an end. 2. Arrive at a judgment or opinion by reasoning. I challenge Mrs. Belser's assertion that I misconstrued the comment, I knew full well what concluded meant. As I have stated previously, "we need to move this case to the discovery phase. There are parties who have refused to give me their full names, individuals who have feigned ignorance to the basic principals in contract, Individuals who have blatantly and recklessly disregarded my rights and the rights of the people of South Carolina. Admission statements, depositions, e-mails, phone calls, and correspondence brought to light in discovery, I believe will prove the tortuous and bad faith actions by the defendant, actions by default force the commission and other public servants to violate their oath of office. Counsel for the defense clearly does not want this case to move to the discovery phase because the facts made bare will prove with a preponderance of the evidence the tortuous and bad faith actions by the defendant, and the fraud DECLLC has committed on myself, the people of South Carolina, and the commission." This process of discovery would have taken

several months to perform especially by a layman. There is no way this case could be “concluded” if my motion in opposition was considered and accepted by the commission leading to the discovery phase.= bias. No other possible explanation exists .

Conflict of Interest: It is a fact that the SCPSC has approved and is in favor of the digital meters DECLLC is installing. Any challenge to these meters is a challenge to the SCPSC itself. How can a commission adjudicate a complaint impartially if the plaintiff is challenging rulings that they have determined are legitimate, all of the points I have made would prove the commission itself was in error. I am entitled to a fair and meaningful hearing; I cannot receive a fair and meaningful hearing if a conflict of interest exists.

This motion for a rehearing is intended for a new impartial commission to consider, if it is being considered by the same commission I have motioned to recuse, I expect you will deny without explanation, and I will bring this case before the South Carolina Appellate Court.

Regards,

Enrique McMilion Jr.